

EXECUTIVE CHAMBERS

HONOLULU

April 27, 2004

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2525 HD1 CD1

Honorable Members  
Twenty-Second Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2525 HD1 CD1, entitled "Relating to State Funds."

The purpose of this bill is to dramatically restructure the method of funding the Department of Commerce and Consumer Affairs ("Department") by repealing the Compliance Resolution Fund ("CRF"). This bill requires the transfer of monies in the CRF account as of June 30, 2004 to the general fund, with the exception of \$4.2 million that would be used by the Department's Professional and Vocational Licensing division ("PVL"). The bill also imposes a 90% floor and a 110% ceiling on annual Department revenues in relation to Department expenses.

This bill is objectionable because it destroys a system under which the Department is successfully accomplishing its missions - protecting consumers, regulating various businesses, and overseeing business registrations and filings. This bill compromises the ability of the Department to achieve these important public purposes. The bill takes approximately \$35 million from the State's businesses rather than return that money to these businesses. It is a money grab, first and foremost.

The current system of self-sufficiency allows the Department of Commerce and Consumer Affairs to operate with regulatory independence and objectivity. The Department regulates many different businesses and professions including financial institutions, insurance companies, utilities, and many professions and vocations. It often has to make judgments that are not popular with those being regulated. Being self-sufficient ensures the continuity of resources to carry out these important regulatory tasks. In addition, being self-sufficient allows the Department to avoid competing for funds and being underfunded as has happened in the past. This bill would irrefutably harm the Department's functioning by changing the system of funding.

On a practical level, the bill was introduced without warning, without sufficient discussion, and without evident thought. As a result, it is badly written.

For example, the bill is silent on whether the 90% floor and 110% ceiling created in Section 2 includes general fund appropriations or just special funds. The bill is also silent as to whether those calculations are to be made across the Department as a whole or on a division-by-division basis.

There are other aspects of this bill that are incongruous with its stated purpose or have unintended consequences. Although this bill purports to retain self-sufficiency for licensing activities, it places in the general fund those fees resulting from regulation of condominium property regimes by the Real Estate Commission.

Unintended consequences are further evidenced by the fact that the Medical Claims Conciliation Panel ("MCCP") is left unfunded. The Department will be unable to hear all of the cases brought to the MCCP and will not be able to make refunds to any parties to such cases.

Section 2 of the bill transfers the Compliance Resolution Fund balance to the general fund at the end of the fiscal year. These monies, however, were collected from thousands of businesses, professionals, and other licensees for the purpose of providing specific services. While this may be legally permissible, it is bad policy. There is already ongoing litigation brought by the Hawaii Insurers Council over the 2002 transfer of \$2 million from the Insurance Regulation Fund (a fund now incorporated within the CRF) to the general fund (Act 178/2002). Hawaii Insurers Council alleges that such transfers violate specific statutes as well as the state and federal constitutions insofar as "it would result in the transformation of the assessments dictated and imposed by the Insurance Commissioner on insurance companies into an illegal and unconstitutional tax." This bill may very well spawn more such litigation.

Ultimately, there is no justification for this bill. Legislators contended that the bill would advance "accountability" and "transparency", and would ensure against the Department's accumulation of what the Legislators characterized as "excess funds", which, allegedly, were the consequences of Department fees that are too high. These are clearly opportunistic arguments, with no basis in fact as related to this Department.

Accountability and transparency are already guaranteed by the budgetary process that the Department and the CRF undergo each year. Unlike other special funds, the CRF is thoroughly analyzed by both the Administration and the Legislature, with spending ceilings approved by the Legislature as part of each budget. If the Legislature were truly interested in accountability and transparency or the reduction of "excess" reserves, it could have adopted the Department's offer to place a reserve ceiling and reporting requirements in the law without repealing the CRF. Further, the Legislature could have passed the bills submitted by the Department that would have allowed the Department to further cut its fees.

For the foregoing reasons, I am returning Senate Bill No. 2525 HD1 CD 1 without my approval.

Respectfully,

LINDA LINGLE  
Governor of Hawaii